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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/665,394

09/17/2003

Kurt-Reiner Geiss

7390-X03-018

4213

27317

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02/20/2008

FLEIT KAIN GIBBONS GUTMAN BONGINI & BIANCO

21355 EAST DIXIE HIGHWAY

SUITE 115

MIAMI, FL 33180

EXAMINER

MAEWALL, SNIGDHA

ART UNIT

PAPER NUMBER

1612

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/665,394	Applicant(s) GEISS, KURT-REINER	
	Examiner Snigdha Maewall	Art Unit 1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Summary

1. Receipt of Applicant's arguments/Remarks and amended claims filed on 12/04/2007 is acknowledged.

Claims 1, 3, 5-8, 10 and 12 are amended in this application.

Claims **1-13** are pending in this application and claims **1-13** will be prosecuted on the merits.

The rejections made under 35 USC 112.1 and 112.2 have been withdrawn in view of Applicant's amendments.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 4 the phrase "for example" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d). Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent (6,514,973) in view of (US Pg Pub. US 20020150632 A1) and (US 20050244510 A1).

'973 teaches phosphatidyl serine provides metabolic support to a wide range of brain functions. Phosphatidyl serine stimulates glucose metabolism in the brain and also increases the number of neurotransmitter receptor sites. (see column 2, lines 32-35).

'973 further teaches that the compounds are suitable for food or food supplement composition (see column 6, lines 55-56).

'632 teaches synergistic composition comprising effective amount of phosphatidyl serine, folic acid and tyrosin etc. (see abstract). The composition offers comprehensive brain nutrient supplementation and therefore comprehensive increases in neurotransmitter levels (see paragraph [0006]). The reference further discloses that glucose is the main supply of energy for the brain. Without folic acid the glucose metabolic activity efficiency is hindered. The neurotransmitter levels are integrally linked to energy metabolism in brain and thus the cognitive efficiency is hindered when a deficiency is present in a nutritional compound (see paragraph [0018]). Given that, it

is apparent that glucose and phosphatidyl serine as a nutrient both contribute towards the cognitive efficiency.

'510 teaches formulas for providing compositions for improving mental performance comprising phosphatidyl serine (see abstract). On paragraph [0045], the reference discloses that phosphatidyl serine is associated with our ability to think, reason and concentrate. The amount disclosed in the composition is preferably from 40 mg to 100 mg (see paragraph [0047]) (It is to be noted that the amount of phosphatidyl serine is very close to the amount as claimed instantly.)

Based on the combined teachings of the above three references, it would have been obvious to the one of ordinary skilled in the art at the time of the instant invention to incorporate carbohydrate and phosphatidyl serine in a specific proportion in a nutritional food for improving the cognitive abilities. One skilled in the art would have been motivated to do so and arrive to the claimed invention based on the combined teachings of the cited prior art whereby '973 teaches phosphatidyl serine stimulates glucose metabolism in the brain and also increases the number of neurotransmitter receptor sites, '632 teaches the nutritional advantages of glucose and phosphatidyl serine towards cognitive efficiencies and '510 teaches and provides guidance as to how to prepare a composition for improving mental performance comprising phosphatidyl serine.

With respect to various amounts and percentages of various components, it is the position of the examiner that optimization of such parameters would have been within the purview of a skilled artisan at the time the invention was made by doing

experimental manipulations in the absence of superior and unexpected results.

“[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235(CCPA 1955).

6. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang et al. (US pub no. 2003/0161861 A1) in view of Strumor et al. (US Patent No. 6149939) and further in view of (US Pg Pub. US 20020150632 A1) and (US 20050244510 A1).

Lang et al. discloses a cereal product comprising starch, which improves cognitive performances, in particular memory retention, attention concentration, vigilance and /or mental well being in people and particularly in a child and an adolescent. Table 1 on page 2 discloses a composition comprising spaghetti, kidney beans potatoes white bread and whole meal bread etc. Table 8 depicts carbohydrates, proteins and lipids.

While Lang et al. discloses lipids in their composition, Lang et al. does not disclose phosphatidyl serine specifically. Strumor et al. discloses dissolvable oral tablets and mini bars for aiding memory which contain healthful ingredients such as oxygen enhancers, vitamins, enzymes, dehydrated foods, soy proteins, herbs, roots, vitamins and phosphatidyl serine. (See abstract and examples I-IV).

‘632 teaches synergistic composition comprising effective amount of phosphatidyl serine, folic acid and tyrosin etc. (see abstract). The composition offers

comprehensive brain nutrient supplementation and therefore comprehensive increases in neurotransmitter levels (see paragraph [0006]). The reference further discloses that glucose is the main supply of energy for the brain. Without folic acid the glucose metabolic activity efficiency is hindered. The neurotransmitter levels are integrally linked to energy metabolism in brain and thus the cognitive efficiency is hindered when a deficiency is present in a nutritional compound (see paragraph [0018]). Given that, it is apparent that glucose and phosphatidyl serine as a nutrient both contribute towards the cognitive efficiency.

'510 teaches formulas for providing compositions for improving mental performance comprising phosphatidyl serine (see abstract). On paragraph [0045], the reference discloses that phosphatidyl serine is associated with our ability to think, reason and concentrate. The amount disclosed in the composition is preferably from 40 mg to 100 mg (see paragraph [0047]) (It is to be noted that the amount of phosphatidyl serine is very close to the amount as claimed instantly.)

It would have been obvious to the one of ordinary skilled in the art at the time the invention was made to incorporate phosphatidyl serine in the composition forwarded by Lang et al. because the composition comprising phosphatidyl serine helps in aiding memory as per Strumor et al. Further more, based on the combined teachings of the above references, it would have been obvious to the one of ordinary skilled in the art at the time of the instant invention to incorporate carbohydrate and phosphatidyl serine in a specific proportion in a nutritional food for improving the cognitive abilities. One skilled in the art would have been motivated to do so and arrive to the claimed invention based

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on the combined teachings of the cited prior art whereby Lang et al. teaches preparing a cereal product comprising starch, which improves cognitive performances, Strumor teaches advantages of minibar comprising phosphatidyl serine, '632 teaches the nutritional advantages of glucose and phosphatidyl serine towards cognitive efficiencies and '510 teaches and provides guidance as to how to prepare a composition for improving mental performance comprising phosphatidyl serine.

A skilled artisan would thus have been motivated to prepare a functional food comprising phosphatidyl serine, vitamins, proteins and carbohydrates with a reasonable expectation of success. With respect to various amounts and percentages of various components, it is the position of the examiner that optimization of such parameters would have been within the purview of a skilled artisan at the time the invention was made by doing experimental manipulations in the absence of superior and unexpected results. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235(CCPA 1955).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Snigdha Maewall whose telephone number is (571)-272-6197. The examiner can normally be reached on Monday to Friday; 8:30 a.m. to 5:00 p.m. EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-0580. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gollamudi S Kishore, Ph.D/

Primary Examiner, Art Unit 1612

/Snigdha Maewall/
Examiner, Art Unit 1612